

CHAPTER 17-05 TRANSMISSION AUTHORITY

17-05-01. Declaration of findings and public purpose. The legislative assembly finds and declares that:

1. North Dakota has twenty-five billion tons of abundant, recoverable lignite coal reserves, enough to last eight hundred years at today's thirty million tons of annual production.
2. The lignite industry presently generates electricity for more than two million people in the northern great plains region and there is increased regional demand for development of North Dakota's lignite resources.
3. North Dakota has enormous wind resources, providing additional economic opportunity to broaden and diversify the state's economy and diversify the region's energy supply, and that timely development of these resources will stabilize and increase revenues to the state.
4. Transmission constraints impede the development of the state's lignite and wind resources.
5. An essential governmental function and public purpose is to assist with the removal of electric transmission export constraints and to assist with upgrading and expansion of the region's electrical transmission grid to facilitate the development of the state's abundant natural resources.
6. Developing and exporting our natural resources will promote the public interest by increasing employment, stimulating economic activity, augmenting sources of tax revenue, fostering economic stability, and improving the state's economy.
7. State ownership of electrical transmission facilities may not exceed the extent and duration necessary or useful to promote the public interest.

17-05-02. North Dakota transmission authority. There is created the North Dakota transmission authority, which shall be governed by the industrial commission.

17-05-03. Definitions. As used in this chapter:

1. "Authority" means the industrial commission acting as the North Dakota transmission authority.
2. "Commission" means the industrial commission.
3. "Notice of intent" means the notice a person delivers to the authority indicating willingness to construct transmission facilities contemplated by the authority or to provide services fulfilling the need for such transmission facilities.
4. "Project area" means the geographic area in which construction of a transmission facility contemplated by the authority is likely to occur.
5. "Transmission facilities" means electric transmission lines and substations, and related structures, equipment, rights of way, and works of public improvement, located within and outside this state, excluding electric generating facilities.

17-05-04. Purposes. The purpose for which the authority is created is to diversify and expand the North Dakota economy by facilitating development of transmission facilities to support the production, transportation, and utilization of North Dakota electric energy.

17-05-05. Powers. The authority has all powers necessary to carry out the purposes of this chapter, including the power to:

1. Make grants or loans and to provide other forms of financial assistance as necessary or appropriate for the purposes of this chapter;
2. Make and execute contracts and all other instruments necessary or convenient for the performance of its powers and functions under this chapter;
3. Borrow money and issue evidences of indebtedness as provided in this chapter;
4. Receive and accept aid, grants, or contributions of money or other things of value from any source, including aid, grants, or contributions from any department, agency, or instrumentality of the United States, subject to the conditions upon which the aid, grants, or contributions are made and consistent with the provisions of this chapter;
5. Issue and sell evidences of indebtedness in an amount or amounts as the authority may determine, but not to exceed eight hundred million dollars, plus costs of issuance, credit enhancement, and any reserve funds required by agreements with or for the benefit of holders of the evidences of indebtedness for the purposes for which the authority is created under this chapter, provided that the amount of any refinancing shall not be counted toward such eight hundred million dollar limitation to the extent it does not exceed the outstanding amount of the obligations being refinanced;
6. Refund and refinance its evidences of indebtedness;
7. Make and execute interest rate exchange contracts;
8. Enter lease-sale contracts;
9. Pledge any and all revenues derived by the authority under this chapter or from a transmission facility, service, or activity funded under this chapter to secure payment or redemption of the evidences of indebtedness;
10. To the extent and for the period of time necessary for the accomplishment of the purposes for which the authority was created, plan, finance, develop, acquire, own in whole or in part, lease, rent, and dispose of transmission facilities;
11. Enter contracts to construct, maintain, and operate transmission facilities;
12. Consult with the public service commission, regional organizations, and any other relevant state or federal authority or persons as necessary and establish reasonable fees, rates, tariffs, or other charges for transmission facilities and all services rendered by the authority;
13. Lease, rent, and dispose of transmission facilities owned pursuant to this chapter;
14. Investigate, plan, prioritize, and propose corridors of the transmission of electricity;
15. Participate in and join regional transmission organizations; and
16. Do any and all things necessary or expedient for the purposes of the authority provided in this chapter.

17-05-06. Authority may act.

1. The authority shall coordinate its plans for transmission facilities with regional organizations having transmission planning responsibilities for the project area.
2. Before exercising its powers to construct transmission facilities granted to it in this chapter, the authority shall publish, in a newspaper of general circulation in North Dakota and in a newspaper in the project area, a notice describing the need for transmission facilities contemplated by the authority. Persons willing to construct the transmission facilities or furnish services to satisfy the needs described in the notice have a period of one hundred eighty days from the date of last publication of the notice within which to deliver to the authority a notice of intent. After receipt of a notice of intent, the authority may not exercise its powers to construct transmission facilities unless the authority finds that exercising its authority would be in the public interest. In making such a finding the authority shall consider factors including economic impact to the state, economic feasibility, technical performance, reliability, past performance and the likelihood of successful completion and ongoing operation.
3. The authority may require a person giving a notice of intent to provide a bond and to submit a plan for completion of the transmission facilities or commencement of services within a period of time acceptable to the authority. If no person submits an adequate plan or bond as required by the authority, the authority may proceed with contracting for construction of the facility described in the authority's published notice.

17-05-07. Authority may participate upon request. The authority may participate in a transmission facility through financing, planning, joint ownership, or other arrangements at the request of a person giving a notice of intent.

17-05-08. Evidences of indebtedness.

1. Evidences of indebtedness of the authority must be authorized by resolution of the industrial commission and may be issued in one or more series and must bear such date or dates, mature at such time or times, bear interest at such rate or rates of interest per year, be in such denomination or denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable from such sources in such medium of payment at such place or places within or without the state, and be subject to such terms of redemption, with or without premium, as such resolution or resolutions may provide. Evidences of indebtedness of the authority are to mature not more than forty years from the date of issue. Evidences of indebtedness of the authority may be sold at such time or times and at such price or prices as the authority determines.
2. Evidences of indebtedness and grants, loans, or other forms of financial assistance issued by the authority are payable solely from:
 - a. Revenues that may be received by the authority from transmission facilities, services, or activities funded under this chapter with the proceeds of the authority's evidences of indebtedness, subject only to prior payment of the reasonable and necessary expenses of operating and maintaining such transmission facilities except depreciation.
 - b. Amounts received by the authority under loans authorized under this chapter.
 - c. Revenues received by the authority under this chapter from any source other than general tax revenues.
3. The evidences of indebtedness are not subject to taxation by the state or any of its political subdivisions and do not constitute a debt of the state of North Dakota within

the meaning of any statutory or constitutional provision and must contain a statement to that effect on their face.

4. The authority may establish and maintain a reserve fund for evidences of indebtedness issued under this chapter. There must be deposited in the reserve fund:
 - a. All moneys appropriated by the legislative assembly to the authority for the purpose of the reserve fund.
 - b. All proceeds of evidences of indebtedness issued under this chapter required to be deposited in the reserve fund by the terms of any contract between the authority and the holders of its evidences of indebtedness or any resolution of the authority.
 - c. Any lawfully available moneys of the authority which it may determine to deposit in the reserve fund.
 - d. Any moneys from any other source made available to the authority for deposit in the reserve fund or any contractual right to the receipt of moneys by the authority for the purpose of the fund, including a letter of credit, surety bond, or similar instrument.
5. The authority must include in its biennial request to the office of the budget the amount, if any, necessary to restore any reserve fund established under this section to an amount equal to the amount required to be deposited in the fund by the terms of any contract or resolution approved by the commission.
6. The commission may approve a resolution for the issuance of bonds as provided in this section which states in substance that this subsection is applicable to any required debt service reserve for bonds issued under that resolution in an aggregate amount not to exceed two hundred forty million dollars plus costs of issuance, credit enhancement, and any reserve funds required by agreements with or for the benefit of holders of the evidences of indebtedness for the purposes for which the authority is created under this chapter. The amount of any refinancing, however, may not be counted toward the two hundred forty million dollar limitation to the extent the amount does not exceed the outstanding amount of the obligations being refinanced. No more than thirty percent of the total project costs for any single transmission facility project may be financed by bonds issued under this section which are supported by the debt service reserve fund approved by the commission under this subsection. To ensure the maintenance of the required debt service reserve fund approved by the commission under this subsection, the legislative assembly shall appropriate and pay to the authority for deposit in the reserve fund any sum, certified by the commission as necessary to restore the reserve fund to an amount equal to the required debt service reserve fund approved by the commission.
7. Any pledge of revenue made by the industrial commission as security for the authority's evidences of indebtedness is valid and binding from time to time when the pledge is made. The revenues or other moneys so pledged and thereafter received by the authority are immediately subject to the lien of any such pledge without any physical delivery thereof or further act, and the lien of any such pledge is valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, regardless of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be filed or recorded, except in the records of the authority.
8. The authority is authorized and empowered to obtain from any entity of the state, any department or agency of the United States of America, or any nongovernmental insurer any insurance, guaranty, or liquidity facility, or from a financial institution a

letter of credit to the extent such insurance, guaranty, liquidity facility, or letter of credit now or hereafter available, as to, or for, the payment or repayment of, interest or principal, or both, or any part thereof, on any evidences of indebtedness issued by the authority pursuant to this chapter, and to enter into any agreement or contract with respect to any such insurance, guaranty, letter of credit, or liquidity facility, and pay any required fee, unless the same would impair or interfere with the ability of the authority to fulfill the terms of any agreement made with the holders of its evidences of indebtedness.

9. After issuance, all evidences of indebtedness of the authority are conclusively presumed to be fully authorized and issued under the laws of the state, and any person or governmental unit is estopped from questioning their authorization, sale, issuance, execution, or delivery by the authority.
10. When the authority has issued evidences of indebtedness and pledged the revenues of the transmission facilities for the payment thereof as herein provided, the authority shall operate and maintain the transmission facilities and shall impose and collect fees and charges for the services furnished by the transmission facilities, including those furnished to the authority itself, in the amounts and at the rates as are fully sufficient at all times to:
 - a. Pay the expenses of operating and maintaining the transmission facilities;
 - b. Provide a debt service fund sufficient to assure the prompt payment of principal and interest on the evidences of indebtedness at maturity; and
 - c. Provide a reasonable fund for contingencies as may be required by the resolution authorizing the evidences of indebtedness.

17-05-09. Public service commission jurisdiction and consultation.

1. The authority and the transmission facilities built under this chapter, until sold or disposed of by the authority, are exempt from the provisions of title 49 except for chapter 49-22. Upon sale or disposal by the authority, transmission facilities built under this chapter are subject to the provisions of title 49.
2. The authority shall consult with the public service commission with respect to the rates charged by the authority for use of its transmission facilities and such rates must thereafter be considered just and reasonable in proceedings before the public service commission pursuant to section 49-05-06.
3. The authority shall conduct its activities in consultation with transmission providers, wind interests, the lignite research council, and other persons having relevant expertise.

17-05-10. Bonds as legal investments. The bonds of the authority are legal investments which may be used as collateral for public funds of the state, insurance companies, banks, savings and loan associations, investment companies, trustees, and other fiduciaries which may properly and legally invest funds in their control or belonging to them in bonds of the authority. The state investment board may invest in bonds of the authority in an amount specified by the state investment board.

17-05-11. Disposal of transmission facilities.

1. Before becoming an owner or partial owner of a transmission facility, the authority shall develop a plan identifying:
 - a. The public purposes of the authority's ownership;

- b. Conditions that would make the authority's ownership no longer necessary for accomplishing those public purposes; and
 - c. A plan to divest the authority's ownership interest as soon as economically prudent once those conditions occur.
2. For transmission facilities that are leased to another entity by the authority, at the end of the lease, absent default by the lessee, the authority shall convey its interest in the transmission facilities to the lessee.
3. For transmission facilities that are owned by the authority without a lessee, the authority shall divest itself of ownership as soon as economically prudent in accordance with the divestiture plan developed pursuant to subsection 1.

17-05-12. (Effective through December 31, 2009) Exemption from property taxes.

Transmission facilities built under this chapter are exempt from property taxes for a period determined by the authority not to exceed the first five taxable years of operation; after this initial period, transmission lines of two hundred thirty kilovolts or larger and the transmission lines' associated transmission substations remain exempt from property taxes but are subject to a per mile tax at the full per mile rate and subject to the same manner of imposition and allocation as the per mile tax imposed by subsection 2 of section 57-33.1-02 without application of the discounts provided in that subsection.

(Effective for taxable years beginning after December 31, 2009) Exemption from property taxes. Transmission facilities built under this chapter are exempt from property taxes for a period determined by the authority not to exceed the first five taxable years of operation; after this initial period, transmission lines of two hundred thirty kilovolts or larger and the transmission lines' associated transmission substations remain exempt from property taxes but are subject to a per mile tax at the full per mile rate and subject to the same manner of imposition and allocation as the per mile tax imposed by section 57-33.2-02 without application of the discounts provided in that section.

17-05-13. Reporting requirements. The authority shall deliver a written report on its activities to the legislative council each biennium. Notwithstanding chapter 54-60.1, the authority shall provide an annual report to the industrial commission detailing activities and expenditures incurred during the preceding year.

17-05-14. Access to authority records - Confidentiality.

1. Materials and data submitted to, or made or received by, the authority, to the extent that the authority determines the materials or data consist of trade secrets or commercial, financial, or proprietary information of individuals or entities applying to or contracting with the authority or receiving authority services under this chapter are subject to section 44-04-18.4.
2. A person or entity must file a request with the authority to have material designated as confidential under subsection 1. A request to have material designated as confidential is exempt as defined in section 44-04-17.1. The request must contain any information required by the authority and must include at least:
 - a. A general description of the nature of the information sought to be protected.
 - b. An explanation of why the information derives independent economic value, actual or potential, from not being generally known to other persons.
 - c. An explanation of why the information is not readily ascertainable by proper means by other persons.

- d. A general description of any person or entity that may obtain economic value from disclosure or use of the information and how the person or entity may obtain this value.
 - e. A description of the efforts used to maintain the secrecy of the information.
3. The information submitted under subsection 2 is confidential. The authority shall examine the request and determine whether the information is relevant to the matter at hand and is a trade secret under the definition in section 47-25.1-01 or 44-04-18.4. If the authority determines the information is either not relevant or not a trade secret, the authority shall notify the requester and the requester may ask for the return of the information and request within ten days of the notice. If no return is sought, the information and request are a public record.